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IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

BENJAMIN A. RASKY,

Petitioner,

vs.

COLUMBIA BROADCASTING SYSTEM, INC., a/k/a CBS-WBBM, a corporation, SUSAN ANDERSON, ELLIS B. LEVIN, EDGEWATER COMMUNITY COUNCIL, ORGANIZATION OF THE NORTHEAST, EDGEWATER RESIDENTS TOGETHER IN ACTION, 5600 BLOCK CLUB OF WINTHROP, a corporation, MARION VOLINI, LEROY BLOOMAERT, DALE BURTON, GLORIA BITTNER (a/k/a BITNER) DAVID WALKER, FABIO RINCON, KELLY SANDERS, ALBERT GRIFFIN, and unknown officers and directors of the foregoing community organizations, CHICAGO READER, INC., a corporation, and DON ROSE,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE APPELLATE COURT OF ILLINOIS,
FIRST DISTRICT, FIRST DIVISION

BRIEF OF RESPONDENTS CBS INC. AND SUSAN ANDERSON IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF THE CASE

Although Petitioner's statement of the case is insufficient, misleading and irrelevant, we will not restate the facts here; they are well stated in the opinion of the Illinois Appellate Court, 103 Ill. App. 3d 577, 431 N. E. 2d 1055, a copy of which is annexed to the Petition for Writ of Certiorari as Appendix "A." The one additional relevant fact, not apparent from that

opinion, is that the first time Petitioner raised a due process argument was in his initial brief to the Illinois Appellate Court, and there the words "due process" were merely stated, without argument or citation of authority as to how the proceedings in the trial court affected Petitioner's due process rights.

SUMMARY OF ARGUMENT

The Petition for Writ of Certiorari should be denied because it presents no substantial federal question and because the decision below rests on adequate and independent state law grounds.

ARGUMENT

Petitioner's complaint in the trial court attempted to allege the state law torts of libel, trespass and invasion of privacy by private entities. The issues were governed solely by Illinois law. *See Paul* v. *Davis*, 424 U. S. 693, 698 (1976) ("Concededly if the same allegations had been made about respondent by a private individual, he would have nothing more than a claim for defamation under state law."). The trial court and the Illinois Appellate Court ruled Petitioner had failed to state a cause of action under Illinois law. The Illinois Appellate Court denied rehearing and the Illinois Supreme Court denied leave to appeal. The Illinois courts did not discuss or even mention "due process" under either the United States or Illinois Constitutions.

Petitioner now presents no substantial federal question, *Equitable Life Assurance Society* v. *Brown*, 187 U. S. 308, 311 (1902), nor does he show that the decisions below were not based on adequate interpretations of state law by the state courts, independent of federal constitutional concerns, *Fox Film Corp.* v. *Muller*, 296 U. S. 207, 210 (1935). *See also Murdock* v. *City of Memphis*, 87 U. S. 590, 629 (1875) ("merely *raising*" federal question is insufficient) (emphasis in original); R. Stern & E. Gressman, *Supreme Court Practice* 208-45 (5th ed. 1978).

Petitioner's chanting of the words "due process" does not transform this case into one subject to review by this Court, just as his mere mention of those words, without elaboration, for the first time in a brief to the Illinois Appellate Court failed to properly present a federal constitutional question. *See Bowe* v. *Scott*, 233 U. S. 658, 663 (1914). None of the courts below passed upon any due process issue, federal or state. In Illinois it has been held that constitutional questions raised but not passed upon by the lower court are not reviewable. *Midland Elec. Coal Corp.* v. *County of Knox*, 1 Ill. 2d 200, 223-24, 115 N. E. 2d 275, 287 (1953). Moreover, under Illinois law, Petitioner's mere mention of "due process" in his appellate brief, without citation of authority or argument, precludes consideration of the argument. *Village of Roxana* v. *Constanzo*, 41 Ill. 2d 423, 426, 243 N. E. 2d 242, 244 (1968). This Court has deferred to such state law rules. *Beck* v. *Washington*, 369 U. S. 541, 552-53 (1962).

In essence, Petitioner appears to contend that the Illinois courts erroneously interpreted state law pleading rules governing the substantive elements of the torts of defamation, trespass and invasion of privacy. Even if this contention had been presented properly as a due process claim below, it is without substance. *See Paul* v. *Davis*, 424 U. S. 693 (1976).

CONCLUSION

For the foregoing reasons, we respectfully submit that the Petition for Writ of Certiorari should be denied.

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